



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1997

Mr. Alfred V. Sumpter
Ortiz & Sumpter
310 North Main
Del Rio, Texas 78840

OR97-2822

Dear Mr. Sumpter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111366.

The Housing Authority of the City of Del Rio, (the "authority"), which you represent, received a request for information regarding "allegations made about or concerning the Nelrod Company and/or Nelson Rodriguez, specifically but not limited to, statements, allegations, information or investigation thereof made by or on behalf of Fernando Chapa, including specifically all references, allegations or representations made regarding the Nelrod Company and/or Nelson Rodriguez." You assert that the information is excepted from disclosure pursuant to sections 552.101, 552.102 and 552.111 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. You also raise section 552.102, which protects "information in a personnel file, the disclosure of

which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together.

Upon review of the information submitted, we find nothing which implicates a right of privacy. Therefore, we conclude you may not withhold any of the requested information under sections 552.101 or 552.102 in conjunction with common law privacy.

You also assert that the minutes of a session of the Board of Commissioners which was closed to discuss personnel matters and to receive the advice of counsel are excepted under section 552.101. This office has ruled, however, that the mere fact information was discussed in an executive session does not make it confidential under the Open Records Act. Open Records Decision Nos. 605 (1992), 485 (1987). As you raise no other exceptions to disclosure for this information, we therefore conclude that the minutes of the August 14, 1997 executive session of the authority's board of commissioners may not be withheld under section 552.101.¹

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

While some of the documents pertain to the policy functions of the authority, some of the information contained in these documents is purely factual. We have marked those portions of the documents that may be withheld from required public disclosure under section 552.111. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented

¹We note you also make the general assertion that certain information is excepted from disclosure under section 552.101 "as being information considered to be confidential." As you refer to no provisions of law to support this assertion, and there is no right of privacy in the requested information, we conclude that you may not withhold the requested information under section 552.101.

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 111366

Enclosures: Marked documents

cc: Ms. Virginia L. Winker
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(w/o enclosures)